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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

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11 IN RE: DMCA SECTION 512(H)
SUBPOENA TO GITHUB, INC.
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MISC. ACTION NO. 3:23-MC-80164 LJC

**NEXTEER AUTOMOTIVE
CORPORATION'S MOTION FOR
ADMINISTRATIVE RELIEF GRANTING
NON-DISCLOSURE ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[FILED CONCURRENTLY WITH
DECLARATION OF EMMA E. SOLDON;
[PROPOSED] ORDER GRANTING MOTION
FOR ADMINISTRATIVE RELIEF]*

NOTICE OF MOTION FOR ADMINISTRATIVE RELIEF

Nexteer Automotive Corporation (“Nexteer”), by and through its counsel, hereby moves for administrative relief to request that this Court issue an order requiring that GitHub, Inc. (“GitHub”) not disclose the details of Nexteer’s subpoena in the above-referenced miscellaneous action prior to complying with the subpoena. This motion for administrative relief is based upon the declaration of Emma E. Soldon filed concurrently herewith and the prior filings in this case.

DATED: June 15, 2023

FOLEY & LARDNER LLP
JEFFREY S. KOPP

/s/ Jeffrey S. Kopp
Jeffrey S. Kopp
Attorneys for NEXTEER AUTOMOTIVE
CORPORATION

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nexteer Automotive Corporation (“Nexteer”) respectfully requests that this Court issue a Non-Disclosure Order requiring that GitHub, Inc. (“GitHub”) not disclose the details of Nexteer’s subpoena in the above-referenced miscellaneous action prior to complying with the subpoena.

II. GOOD CAUSE EXISTS WARRANTING EX PARTE RELIEF.

GitHub operates a website to which infringing parties posted confidential and proprietary source code—as well as source code licensed to Nexteer. (*See* Dkt. No. 1 [Declaration of Pete Kiouisis], at ¶ 3–4.) These postings infringe on copyrights held by Nexteer. (*Id.* at ¶ 3.) Nexteer seeks to obtain the identity of the copyright infringers in order to protect its rights under 17 U.S.C. §§ 100, *et seq.* (*Id.* at ¶ 5.)

On May 2025, Nexteer provided GitHub with a DMCA notification, identifying the infringing content and requesting that GitHub identify the alleged infringers. (*Id.* at ¶ 4.) On June 5, 2023, GitHub responded that it required a subpoena to obtain user information. (*Id.* at ¶ 6.) On June 9, 2023, this Court granted Nexteer’s request for the issuance of a DMCA subpoena to identify the alleged copyright infringer(s) who posted Nexteer’s confidential and proprietary source code—as well as source code licensed to Nexteer—on GitHub’s public website without Nexteer’s authorization. (*Id.* at ¶ 3.) Nexteer communicated to this Court, in its request for the issuance of the DMCA subpoena, and to GitHub’s legal team that GitHub should not provide the infringer(s) with advanced notice—*i.e.*, GitHub should not notify the infringer(s) of the subpoena prior to complying with the subpoena. (*See* Declaration of Emma E. Soldon, at ¶ 2.) GitHub replied that it would only honor a non-disclosure order from this Court—not Nexteer’s request not to disclose. (*See id.*)

Nexteer will be irreparably prejudiced without the issuance of a nondisclosure order preventing GitHub from providing advanced notice to the infringer(s) before complying with the subpoena. Notifying the infringer(s) in advance would allow them to take actions to conceal their unlawful actions, which would prevent Nexteer from protecting its rights under 17 U.S.C. §§ 100, *et seq.*

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NEXTEER’S MOTION FOR ADMINISTRATIVE RELIEF; MEMORANDUM OF POINTS AND
AUTHORITIES

1 **III. CONCLUSION**

2 Nexteer respectfully requests that this Court grant its Motion for Administrative Relief Granting
3 a Non-Disclosure Order requiring that GitHub not disclose the details of Nexteer's subpoena in the
4 above-referenced miscellaneous action prior to complying with the subpoena.

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6 DATED: June 15, 2023

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